



PATENT  
4039-0135P

**IN THE U.S. PATENT AND TRADEMARK OFFICE**

Applicants: MAEGLI, et al. Conf.:  
Serial No.: 10/649,825 Group:  
Filed: August 28, 2003 Examiner:  
For: SHELF STABLE MELTABLE PARTICULATE FOOD PRODUCT

**DECLARATION UNDER 37 CFR 1.132**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Jack William MAEGLI, am an inventor of the above-identified application.

The above-identified application claims priority to two provisional applications, filed respectively on January 29, 2003 and October 30, 2002.

Claim 1 of the above-identified application as filed was drawn to a savory, shelf-stable, particulate, melttable, food-grade plasticized composition, said composition having a water activity  $A_w$  of 0.70 or below and comprising an oil-in-water emulsion of: a protein that forms a thermally reversible melttable gel; plasticizer components to solubilize the protein, comprising a polyol plasticizer and a non-polyol plasticizer; a level of an edible oil component sufficient to provide proper texture, mouthfeel, and melt characteristics to the plasticized composition; and a savory flavoring component. Other claims in the application are drawn to more narrowly defined preferred embodiments of that invention.

This Declaration concerns the development of the invention covered by the above-identified application.

On May 17, 2001, an experimental cheese shred prototype was presented to a potential customer for such products. This experimental prototype employed protein gel technology and included a combination of glycerin plasticizer, cheese, and analogue cheese components, with substantially no carbohydrate. This experimental prototype did not meet the formulation requirements of the present invention, at least because it contained no non-polyol plasticizer. This experimental prototype failed to meet the flavor and melting point requirements of the potential customer, and thus was not developed to the extent that it could be offered for sale.

On November 13, 2001 – less than a year prior to the October 30, 2002 filing date of the first priority application – another, different experimental cheese shred prototype was presented to a potential customer for such products. This experimental prototype employed protein gel technology and included a combination of sodium lactate plasticizer, glycerin plasticizer, cheese, and analogue cheese components, with substantially no carbohydrate. This experimental prototype meets the formulation requirements of the present invention. This experimental prototype was indicated by the potential customer to meet about 75% of the customer's flavor and melting point requirements. Therefore, this experimental prototype was not developed to the extent that it could be offered for sale.

During the time period from November 15, 2001 through January 20, 2002, work continued to refine the flavor of the product and to optimize the sodium lactate level in the product. While the product still did not meet 100% of the potential customer's requirements at the end of this period, a confidential consumer sensory trial at that point indicated that the product concept had marketable merit. The sensory trial data was evaluated

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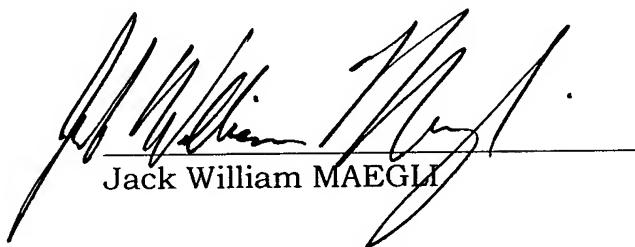
February 1, 2002 – less than a year prior to the January 29, 2003 filing date of the second priority application.

During the time period from January 20, 2002 through June 15, 2002, further formulary developments were made to increase the shelf life of the product in order to further improve its melting characteristics.

Throughout the entire developmental process described above, the product and the method of making it were covered under a confidentiality agreement between the potential customer and the assignee of the invention. All disclosures and/or shipments of products described were made without any payment from the potential customer.

I hereby declare that all statements made herein based upon knowledge are true, and that all statements made based upon information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 9/17/2003



Jack William MAEGLI